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CLERK

IN THE

Supreme Court of the United States

October Term 1945

No. 371

LEO S. SACHAROFF,

Petitioner,

against

EDWARD S. CORSI, as Industrial Commissioner, and ABRAHAM H. GOODMAN, as Deputy Industrial Commissioner.

EMANUEL SCHIFFMAN,

No. 372

Petitioner,

against

EDWARD S. CORSI, as Industrial Commissioner, and ABRAHAM H. GOODMAN, as Deputy Industrial Commissioner.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Leo S. Sacharoff and Emanuel Schiffman, respectfully pray that a writ of certiorari issue to review the decision of the Court of Appeals of the State of New York reversing certain orders of the Appellate

Division of the Supreme Court of the State of New York in and for the First Department, which said last mentioned orders affirmed orders of the Special Term of the Supreme Court in New York County annulling the revocation by the Industrial Commissioner of the authorizations of the petitioners to render medical care under the New York State Workmen's Compensation Law.

A.

Statement of the Matter Involved.

The petitioners are duly licensed physicians of the State of New York. They were also specially authorized to render medical care under its Workmen's Compensation Law. In 1943 the Governor of the State of New York appointed so-called Moreland Commissioners under Section 8 of the Executive Law to inquire into the administration of the Workmen's Compensation Law.

Certain alleged disclosures were made which received widespread publicity. There were insinuations against many persons including physicians. In consequence, proceedings were instituted by the Industrial Commissioner and his deputy, Goodman, under Section 13-d of the Workmen's Compensation Law, which is titled "Removal of Physicians from lists of those authorized to render medical care".

On August 6th, 1943, Goodman issued two orders revoking the authorizations of the petitioners. The name of Dr. Sacharoff was struck from the rolls upon two grounds, first, that he was guilty of accepting a rebate of fees from Bendiner & Schlesinger X-Ray Laboratories, Inc., and,

secondly, that he had declined to testify in a certain proceeding conducted on a previous occasion before another deputy industrial commissioner. The authorization of Dr. Schiffman was revoked upon two grounds. The first was identical with that referred to above in the case of Dr. Sacharoff and the second found him guilty of operating a medical bureau without an appropriate license.

In accordance with the sanction of Article 78 of the Civil Practice Act applications were made in behalf of both petitioners to annul such revocations. A number of legal and factual contentions were urged. In the case of Dr. Sacharoff Mr. Justice Walter at Special Term concluded that it was unnecessary to consider those contentions for the reason that the determination of the Industrial Commissioner was void. He examined critically the two subdivisions of Section 13-d of the Workmen's Compensation Law and found that, whereas under Subdivision 1 a doctor was entitled to a hearing with all that a hearing implies, under Subdivision 2, on the other hand, the Industrial Commissioner was granted the power, apparently, to revoke an authorization to render medical care upon mere "reasonable investigation". He reasoned that with respect to revocation all physicians constituted a single class and that it would be a violation of the constitutional guarantee of the equal protection of the laws

> "to say that charges of misconduct against certain undetermined and legally undeterminable members of the class are to be heard before a medical society or board with a right of review before the industrial council while similar charges against other undetermined and legally undeterminable members of the same class may be heard before the commissioner alone without any right of review before the industrial council."

He said that an investigation was not a hearing and that under all the circumstances it was his duty to reconcile both subdivisions, if possible, to avoid doubt of constitutionality. He was strongly of the opinion that the proper construction of Section 13-d was that Subdivision 2 was subject to and dependent upon Subdivision 1.

The opinion of the Special Term is reported in 182 Misc. 235.

Mr. Justice O'Brien at Special Term reached the identical conclusion on the application of the petitioner, Dr. Schiffman. Both orders were unanimously affirmed by the Appellate Division in 268 App. Div. 765, without opinion. They were reversed by the Court of Appeals in a unanimous opinion rendered by Judge Lewis. It is reported in 294 N. Y. 350. The opinion is set out in full in the appendix.

B.

The Question Presented.

In essence the problem is this:

Does it contravene the due process and equal protection clauses of the Constitution that some doctors, not designable by recognized or stated formula, are granted a hearing before a county medical society with the right of review before the Industrial Council while other physicians, similarly not designable by any recognized or stated formula, may be subjected to an "investigation" by the Industrial Commissioner? Even in the bare presentation of the question to be decided we believe it is fair to observe that the expression "reasonable investigation" in the statute is

not defined. The Industrial Commissioner may possibly, for all that is articulated, be empowered in the quietude of his own thoughts to determine for himself what constitutes "reasonable" and what is a sufficient "investigation". All that the hapless physician may know is that he has been "investigated", even "reasonably investigated", and that his authorization has been revoked.

C.

Reasons Relied on For Allowance of Writ.

It is a sad commentary on human intelligence that the sharp minds which are able to penetrate to the heart of the atom are unable to shape a world replete with social justice. This is the era in which the United States has constituted itself a pioneer in the spiritual elevation of the world. We are attempting to transport the flaming torch of our own idealism to countries long benighted. Let us beware that we do not maintain institutions which will justify other nations in pointing the finger of scorn at us and suggesting that we remove the beam in our own eyes before devoting ourselves to the mote in others.

Physicians practicing in workmen's compensation constitute a single class, certainly for purposes of revocation. The Legislature in Subdivision 1 of Section 13-d of the Workmen's Compensation Law apparently provided that "all charges" of misconduct be heard before a county medical society. In the event of an adverse decision a physician is entitled to a review by the Industrial Council and the additional privilege of presenting to that appellate tribunal further evidence. The Court of Appeals, overrul-

ing two judges at Special Term and five in the Appellate Division, has concluded that concurrent, although concededly diverse, procedures are enunciated. The Industrial Commissioner may for whimsical or capricious reasons or for no reason at all single out a particular physician and inform him that his authorization has been revoked as the result of a "reasonable investigation". To him there shall be denied a hearing and a review. He may never be informed of the character of the investigation or, indeed, that it ever took place at all. He may never acquire sufficient facts to enable him to reach an intelligent conclusion as to whether or not the investigation, if it did occur, was in fact reasonable.

Which physicians in the single category are entitled to the blessings of a full and public hearing with the right of review and which to the dubious mercies of a clandestine investigation by an administrative official?

D.

The Petitioners Are Presenting a Single Application.

While there are some variations in fact, for procedural and constitutional purposes both physicians are in the same classification. In all the appellate courts their position was regarded as the same and their grievance unitary.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals of the State of New York commanding that court to certify and to send to this court for its review a full and complete

transcript of the record of all proceedings in such suits, proceedings or matters and to stand and abide by such order and direction as your Honorable Court shall deem meet and the circumstances of the case require, and that your petitioners may have such other and further relief or remedy in the premises as to this Honorable Court may seem just and proper.

Dated, New York City,
August , 1945.

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